

GRANTED ISSUES

NOTE: THE WORDING OF THE ISSUES IS TAKEN VERBATIM FROM THE PARTIES' PETITIONS FOR DISCRETIONARY REVIEW.

NO ISSUES GRANTED FEBRUARY 28, 2018

PDR NO.	NAME	COUNTY	OFFENSE
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ALPHABETICAL LISTING WITHOUT ISSUES

<u>PDR NO.</u>	<u>NAME</u>	<u>DATE GRANTED</u>
17-0797	ARROYO, DAVID	10/25/17
15-1409	ASBERRY, DAMON LAVELLE	03/09/16
17-0638	BEHAM, RODERICK	10/04/17
16-0365/66	BIEN, MICHAEL JOSEPH	09/14/16
17-0672	BOYETT, CRYSTAL LUMMAS	10/18/17
17-0907	BROUGHTON, CHRISTOPHER ERNEST, JR.	12/06/17
16-1012	BUSH, LANNY MARVIN	01/01/17
17-0205-08	CARSON, GARY	06/28/17
17-0771	CHAMBERS, JOHN	01/10/18
17-0503	DELACRUZ, GEORGE	07/26/17
16-0429	ESTES, RUSSELL LAMAR	09/14/16
17-0538	ETTE, EDDIE OFFIONG	09/13/17
17-1024/25	FINEBERG, LISA ANN	02/07/18
15-1189	FLORES, MAYRA	01/27/16
17-0343	FOWLER, JAMES McLELLAND	09/27/17
17-0711	FRASER, MARIAN	11/01/17
17-0344	GARCIA, JOEL	09/13/17
17-0804	GARCIA, SAMUEL OSVALDO	11/01/17
17-0710	GARRELS, ELIZABETH ANN	08/23/17
17-0812	GOLLIDAY, JOSHUA	02/07/18
17-0181	GONZALEZ, JUAN ANTONIO	05/17/17
17-0441	GUTHRIE-NAIL, VERA ELIZABETH	09/13/17
17-0948	HANSON, CRISPEN	11/01/17
15-0511	HENRY, ALVIN PETER, JR.	10/07/15
16-1380	HERNANDEZ, GEOVANY	03/29/17
16-1269	HOLDER, CHRISTOPHER JAMES	06/07/17
16-1445	INGERSON, FRED EARL III	04/26/17
16-1411	JACOBS, JOSHUA	04/12/17
17-0197	JOHNSON, DONDRE	05/03/17
17-0748	LACKEY, KELSEY JO	11/01/17
17-0563	LANG, TERRI REGINA	10/04/17
17-0736	LEE, JOHN KENNETH	11/15/17
17-0549-51	MARKS, WILLIAM	09/13/17
17-0942-47	MARTINEZ, ANDREY	12/13/17
17-0878	MARTINEZ, JUAN JR.	01/24/18
17-0324	MARTINEZ, ROGER ANTHONY	07/26/17
17-0381	MENDEZ, ADRIAN AARON	06/28/17
17-0234/5	NILES, SCOTT	06/07/17
17-0041	NISBETT, REX ALLEN	07/26/17
16-0061	O'BRIEN, KELVIN LYNN	05/04/16
17-0398	OLIVA, JOSE	07/26/17
17-0792	RAMJATTANSINGH, JASON	11/15/17
16-1452	REYNOLDS, NATALIE AUSBIE	04/26/17
17-0448	RHOMER, WILLIAM	11/08/17
17-0021	RITCHERSON, KAITLYN LUCRETIA	05/03/17
17-0498	ROGERS, WILLIAM	08/23/17
17-1066	ROSS, DAI'VONTE E'SHAUN TITUS	01/24/18
17-0001	ROSS, REBEKAH THONGINH	04/26/17
17-0734	RUSSELL, BOYD RAE	09/13/17
16-0323-25	SAFIAN, ANTHONY ROBERT	08/24/16
17-0264	SEARS, ARMAUD	09/13/17
17-0941	SIMS, CHRISTIAN VERNON	02/14/18
17-0514	SMITH, FERNANDO	08/23/17
17-0715	SMITH, JOSEPH	12/13/17

17-0790	THOMAS, KEITHRICK	11/22/17
17-0967	TRAYLOR, PETER ANTHONY	12/13/17
17-0366	UKWUACHU, SAMUEL	09/13/17
17-0053	VILLEGAS, DANIEL	06/07/17
17-0399	WALKER, KENYETTA DANYELL	08/23/17
17-0792	WATERS, AMANDA	10/25/17
17-0442	WHITE, BRIAN JASON	09/27/17
17-1100	WOOD, CYNTHIA KAYE	01/10/18
17-0174	ZUNIGA, RICARDO	06/07/17

NUMERICAL LISTING WITH ISSUES GRANTED

15-0511	HENRY, ALVIN PETER, JR.	10/07/15
APPELLANT'S	LAMAR	EVADING ARREST

3. When the State failed to properly link Petitioner to the enhancement paragraphs, did the Sixth District Court of Appeals unreasonably hold that Petitioner and Coleman's testimony (showing that Petitioner has been to prison multiple times) is sufficient to uphold the prior enhancement convictions, and is this ruling in conflict with *Prihada v. State* [sic]?

15-1189	FLORES, MAYRA	01/27/16
APPELLANT'S	HARRIS	MURDER

1. The Court of Appeals erred in ruling that the audio recording of Mayra's custodial interrogation was admissible notwithstanding the fact that the recording device used was not capable of making an accurate recording.
2. The Court of Appeals applied the wrong standard in holding that the recording equipment's failure to record twenty minutes of Mayra's custodial interrogation did not amount to an alteration that rendered the recording unreliable and untrustworthy.
3. The Court of Appeals misapplied this Court's holding in *Weatherred* because the audio tape failed to meet the requirements of section three of art. 38.22 and the trial court knew that before its ruling to allow the audio recording into evidence.

15-1409	ASBERRY, DAMON LAVELLE	03/09/16
APPELLANT'S	McLENNAN	MURDER

The Court of Appeals erred in holding it could not consider the trial Court record when reviewing the Court's findings in a Chapter 64 proceeding, where the record was not formally introduced into evidence at the hearing.

16-0061	O'BRIEN, KELVIN LYNN	05/04/16
APPELLANT'S	HARRIS	ENGAGING IN ORGANIZED CRIMINAL ACTIVITY

1. Whether the court of appeals erred in holding that unanimity is not required with respect to the enumerated offenses of theft and money laundering in an engaging in organized criminal activity by commission jury charge. (CR at 868-872; 21 RR at 117-120; 29 RR at 45-46).

16-0323	SAFIAN, ANTHONY ROBERT	08/24/16
16-0324		
16-0325		
APPELLANT'S	TARRANT	AGGRAVATED ASSAULT POSSESSION OF HEROIN EVADING ARREST

The court of appeals erred when it affirmed the trial court's denial of the lesser-included jury charge of deadly conduct in the trial for aggravated assault on a public servant.

16-0365	BIEN, MICHAEL JOSEPH	09/14/16
16-0366		
STATE'S & APPELLANT'S	BROWN	ATTEMPTED CAPITAL MURDER SOLICITATION TO COMMIT CAPITAL MURDER

STATE

1. Did the Eleventh Court of Appeals err by holding that convictions for criminal solicitation and attempted capital murder violate double jeopardy when significant factors indicate a legislative intent to punish these offenses as separate steps in the continuum of a criminal transaction?

2. Assuming a double jeopardy violation, who should determine what the most serious offense is? If this Court answers that question by deciding that a court of appeals should make that determination, what role should the parole consequences of Article 42.12 § 3g have in that analysis when the sentences, fine and restitution are all identical?

APPELLANT

1. The Court of Appeals erred when it held that parole eligibility may determine the "most serious" offense for purposes of double jeopardy.
2. What is the proper remedy for multiple punishment when the "most serious" offense cannot be determined?

16-0429 **ESTES, RUSSELL LAMAR**
STATE'S & APPELLANT'S **TARRANT**

09/14/16
SEXUAL ASSAULT
INDECENCY W/CHILD

STATE

Did the Court of Appeals properly conclude that there was no rational basis for the appellant receiving disparate treatment?

APPELLANT

1. Should Appellant's equal protection claim be reviewed under strict scrutiny?
2. Was it error for the Court of Appeals to affirm Appellant's sexual assault convictions as second-degree felonies and remand those charges to the trial court for a new trial on punishment, rather than order the prosecution of Appellant dismissed or remand the charges to the trial court to enter an order dismissing the prosecution?

16-1012 **BUSH, LANNY MARVIN**
STATE'S **COLEMAN**

01/11/17
CAPITAL MURDER

1. In reviewing sufficiency of the evidence, did the court of appeals err by:
 - failing to consider any reasonable inferences that could be drawn from the evidence,
 - separating evidence about the crime scene from evidence about the relationship between Appellant and the victim as a whole,
 - speculating on evidence that was not offered by the State, and
 - speculating on a hypothesis that was inconsistent with the defendant's guilt,during its review of the sufficiency of the evidence to support a capital allegation that Appellant committed murder while in the course of kidnapping or attempting to kidnap the victim?
2. In considering the "grey area" of criminal attempt law between acts that are simply mere preparation to commit an offense and acts that tend to effect the commission of an offense, may a reviewing court reject a jury's verdict during a sufficiency of the evidence review simply because the reviewing court would have drawn the "imaginary line" in a different location than the jury?

16-1269 **HOLDER, CHRISTOPHER JAMES**
APPELLANT'S **COLLIN**

06/07/17
CAPITAL MURDER

The Court of Appeals erred in holding the State's petition to obtain the Appellant's cell phone records set forth the "specific and articulable facts" required by federal law under 18 U.S.C. section 2703(d).

16-1380 **HERNANDEZ, GEOVANY**
STATE'S **GILLESPIE**

03/29/17
TAMPERING W/EVIDENCE

1. Does the improved shoulder of a road include the "fog line?"
2. Alternatively, because the issue whether the improved shoulder includes the "fog line" is unsettled, is there reasonable suspicion of a violation of driving on the improved shoulder when a driver drives on the "fog line" but does not cross its outer edge?
3. Is driving on an improved shoulder "necessary" "to avoid a collision" under Tex. Transp. Code §545.058(a)(7) simply because the driver is on a two-lane highway at night with a vehicle traveling in the opposite direction?

16-1411 **JACOBS, JOSHUA**
STATE'S **BOWIE**

04/12/17
AGGRAVATED SEXUAL
ASSAULT

Is it constitutional error to prevent defense counsel from asking a question during voir dire that could give rise to a valid challenge for cause?

16-1445 **INGERSON, FRED EARL III**

04/26/17

STATE'S**HOOD****CAPITAL MURDER**

In a capital case, did the two-justice panel fail to defer to the verdict, apply defunct sufficiency standards, and ignore inculpatory evidence when Appellant was the last person with the victims, had been rejected by them, fled the scene, had a .38— the likely weapon, had a .38 under his car seat the day after, had gun-shot residue on his pants and car seat, and acted suspiciously?

16-1452**REYNOLDS, NATALIE AUSBIE****04/26/17****APPELLANT'S****HUNT****OFFICIAL OPPRESSION**

The Court of Appeals erred by finding that the evidence was legally sufficient to prove that Appellant committed Official Oppression because the State failed to prove beyond a reasonable doubt that Appellant: (1) intentionally subjected the complaining witness to mistreatment or to arrest, detention, search, seizure, dispossession, assessment, or lien that Appellant knows is unlawful; (2) intentionally denied or impeded the complaining witness in the exercise or enjoyment of any right, privilege, power, or immunity, knowing her consent is unlawful; or (3) intentionally subjected another to sexual harassment.

17-0001**ROSS, REBEKAH THONGINH****04/26/17****APPELLANT'S****HUNT****OFFICIAL OPPRESSION**

1. The Court of Appeals erred by finding that the evidence was legally sufficient to prove that Appellant committed Official Oppression because the State failed to prove beyond a reasonable doubt that Appellant intentionally subjected a complaining witness to mistreatment or to arrest, detention, search, seizure, dispossession, assessment, or lien that Appellant knows is unlawful; or intentionally denied or impeded the complaining witness in the exercise or enjoyment of any right, privilege, power, or immunity, knowing her conduct is unlawful; or intentionally subjected another to sexual harassment.

3. The incorrect interpretation of the statute and the incorrect interpretation of the court orders led to an improper conviction.

17-0021**RITCHERSON, KAITLYN LUCRETIA****05/03/17****APPELLANT'S****TRAVIS****MURDER**

The Court of Appeals failed to apply this Court's decision in *Saunders v. State*, 840 S.W.2d 390 (Tex.Cr.App. 1992) in determining that petitioner was not entitled to a lesser-included charge on manslaughter when the jury could reasonably have interpreted petitioner's *mens rea* as reckless about causing death.

17-0041**NISBETT, REX ALLEN****07/26/17****STATE'S****WILLIAMSON****MURDER**

1. In the absence of a body, must the State prove the "fatal act of violence" in order to convict someone of murder?

2. The court of appeals reviewed both the evidence and the elements of the offense in sequential, piecemeal fashion rather than cumulatively, and failed to respect the jury's prerogative to draw inferences and weigh testimony.

3. Is the evidence sufficient to prove appellant murdered his wife?

17-0053**VILLEGAS, DANIEL****06/07/17****STATE'S****EL PASO****CAPITAL MURDER**

1. The Eighth Court erred in holding that the trial court did not abuse its discretion in requiring, and placing the burden upon, the State to establish that jail-recorded telephone conversations Villegas seeks to exclude pretrial are: (1) relevant to an elemental or evidentiary fact of consequence to be litigated at trial, (2) not unfairly prejudicial under rule 403, and (3) not inadmissible hearsay, where such determinations necessarily require the ever-changing context of a trial and the party claiming the protection of exclusionary rules of evidence bears the burden of proving his case in a pretrial motion.

2. The Eighth Court misapplied the standard for reviewing relevance determinations where in its analysis for determining whether the trial court abused its discretion in excluding relevant evidence looked to whether, based on the trial court's personal evaluation of competing or available inferences, it is reasonable to reject the State's proffered inferences, when the proper standard looks to whether an appellate court can state with confidence that by no reasonable perception of common experience could it be determined that the proffered inference is one that is reasonably available from the evidence.

17-0174**ZUNIGA, RICARDO****06/07/17****STATE'S****EL PASO****CAPITAL MURDER**

ENGAGING IN ORGANIZED CRIMINAL ACTIVITY

In holding the evidence legally insufficient to support the defendant's convictions for engaging in organized criminal activity, specifically, that the State failed to prove that the defendant committed the predicate murders as a member of a criminal street gang, the Court of Appeals improperly required proof of the motive of the gang itself. Even after recognizing that the evidence showed that the defendant and his fellow gang members acted in concert in killing the victims, the Court of Appeals nevertheless improperly held that absent proof of why the gang attacked and killed the victims, the evidence was insufficient to allow the jury to rationally conclude that the killings were a gang activity and that the defendant participated in the killings as a member of the gang.

17-0181	GONZALEZ, JUAN ANTONIO	05/17/17
STATE'S	EL PASO	MURDER

1. The Eighth Court erred in holding that evidence that Gonzalez had consumed ecstasy on the day of the murder was irrelevant to his state of mind and self-defense claim because the State failed to introduce evidence of the drug's half-life or the length of its effects, and that, despite any bearing it had on the central issue of self-defense or the relatively innocuous nature of the intoxication evidence, when compared to the severity of the charged offense (capital murder), its probative value was substantially outweighed by the danger of unfair prejudice.

2. The Eighth Court erred in holding that any erroneous admission of Gonzalez' possession and consumption of ecstasy the day of the murder constituted harmful error where the complained-of evidence was developed quickly through a single witness, the State did not allude to the evidence during closing arguments, and Gonzalez' defensive evidence was internally inconsistent and controverted by the State's evidence. In disregarding the weight of these factors, the Eighth Court erred in its application of the appropriate harm standard.

17-0197	JOHNSON, DONDRE	05/03/17
STATE'S	TARRANT	THEFT

1. In determining whether the evidence is legally sufficient to support the jury's verdicts, the court of appeals failed to measure the evidence, as the court interpreted the evidence, against a hypothetically correct jury charge that included, as the dissent pointed out, a full parties charge and a correct description of the financial instrument stolen, as required under *Garza Vega v. State*, 267 S.W.3d 912, 915-26 (Tex. Crim. App. 2008).

2. In determining whether the evidence is legally sufficient to support the jury's verdicts, the court of appeals erred in failing to view the evidence in the light most favorable to the jury's verdicts, thereby substituting its resolution of fact issues for that of the jury's. See *Adames v. State*, 353 S.W.3d 854, 861 (Tex. Crim. App. 2011); see also *Jackson v. Virginia*, 433 U.S. 307, 319 n.12 (1979).

17-0205	CARSON, GARY	06/28/17
17-0206		
17-0207		
17-0208		
STATE'S	BOWIE	ASSAULT BAIL JUMPING

1. Is a waiver of the right to appeal following a plea of guilty without a recommended sentence invalid because the defendant could not know that an error would occur at the punishment phase?

2. Is the State's waiver of its right to a jury trial adequate consideration to uphold a defendant's waiver in the face of potential future errors and uncertain punishment?

3. Does the classification of an error affect the validity of an appellant's waiver of his right to appeal?

4. May the trial court's unobjected-to consideration of facts not in evidence be raised for the first time on appeal?

17-0234	NILES, SCOTT	06/07/17
17-0235		
COURT'S OWN MOTION	HARRIS	TERRORISTIC THREAT

Whether the Court of Appeals erred in reforming Appellant's judgment to reflect conviction for a Class B misdemeanor.

17-0264	SEARS, ARMAUD	09/13/17
STATE'S	JEFFERSON	AGGRAVATED ROBBERY

Does the record contain no evidence that Appellant was aware that any firearm would be, was being, or had been used or exhibited during the robbery, as the Ninth Court of Appeals held, when there is evidence that one of the intruders carried a long, rifle-like gun and that Appellant transported this intruder to Brown's house directly before the robbery?

17-0324
STATE'S

MARTINEZ, ROGER ANTHONY
VICTORIA

07/26/17
POSSESSION OF PROHIBITED
SUBSTANCE IN A
CORRECTIONAL FACILITY

1. The Court of Appeals erroneously decided an important question of state law in a way that conflicts with the applicable decisions of the Court of Criminal Appeals, by finding that the knowledge of supporting officers cannot be used to establish probable cause.
2. The Court of Appeals failed to conduct the required *de novo* review of whether the evidence known to Officer Quinn was sufficient to establish probable cause and that failure constitutes a departure from the accepted and usual course of judicial proceedings that calls for an exercise of the Court of Criminal Appeals' power of supervision.

17-0343
STATE'S

FOWLER, JAMEL McLELLAND
HUNT

09/27/17
THEFT

May the proponent of a video sufficiently prove its authenticity without the testimony of someone who either witnessed what the video depicts or is familiar with the functioning of the recording device?

17-0344
APPELLANT'S

GARCIA, JOEL
EL PASO

09/13/17
INTOXICATION MANSLAUGHTER
POSSESSION OF CONTROLLED
SUBSTANCE

1. The Court of Appeals erred by applying a de novo standard of review to the trial court's granting of Appellee's motion to suppress evidence, failing to give "almost total deference" to the trial court's findings of fact to support its conclusion that no exigent circumstances existed.
2. The Court of Appeals erred by considering evidence that did not become known to law enforcement until after the warrantless taking of Appellee's blood.

17-0366
STATE'S

UKWUACHU, SAMUEL
McLENNAN

09/13/17
SEXUAL ASSAULT

1. The Court of Appeals misapplied the standard of review for admission of evidence under Rule 412 and 107 in a manner that so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of the Court of Criminal Appeals' power of supervision.
2. The Court of Appeals' failure to conduct a proper harm analysis so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of the Court of Criminal Appeals' power of supervision.

17-0381
STATE'S

MENDEZ, ADRIAN AARON
HARRIS

06/28/17
AGGRAVATED ASSAULT

The court of appeals erred by holding that there was charge error, even though the appellant never objected to or requested that the jury charge include a defensive issue of self-defense instruction to the defensive issue of the lesser-included offense.

17-0398
STATE'S

OLIVA, JOSE
HARRIS

07/26/17
DRIVING WHILE INTOXICATED

In DWI-second-offender cases, is a prior DWI conviction an offense element or a punishment enhancement?

17-0399
STATE'S

WALKER, KENYETTA DANYELL
ORANGE

08/23/17
ENGAGING IN ORGANIZED
CRIMINAL ACTIVITY

Can a conviction for a charged, but nonexistent, offense be reformed to a subsumed and proven offense that does exist?

17-0441
APPELLANT'S

GUTHRIE-NAIL, VERA ELIZABETH
COLLIN

09/13/17
CONSPIRACY TO COMMIT
CAPITAL MURDER

1. The Court of Appeals erred in dismissing this case for want of jurisdiction, because 'no written appealable order' existed when in fact the original judgment, nunc pro tunc, provided the Court of Appeals with a written appealable order.
2. The Court of Appeals erred in giving this appeal a new cause number and then stating there was no written appealable order where the remand to the trial court and subsequent notice of appeal was a continuation of the original appeal in Court of Appeals No. 05-13-00016-CR.
3. The Court of Appeals erred in dismissing this cause for want of jurisdiction stating there was no appealable order which if stands allows the Court of Appeals and the Trial Court to deny Appellant due process of law in the continuing exercise of her right to appeal the trial court's rationale for entering a defective order nunc pro tunc adding a deadly weapon finding to the judgment.

17-0442 WHITE, BRIAN JASON
APPELLANT'S COLLIN

09/27/17
ENGAGING IN ORGANIZED
CRIMINAL ACTIVITY
MONEY LAUNDERING

Whether the proponent of evidence at trial has the burden of showing statutory compliance in response to an objection under Article 38.23 (the Texas exclusionary Rule).

17-0448 RHOMER, WILLIAM
APPELLANT'S BEXAR

11/08/17
MURDER

1. Did the appellate court, in affirming the trial court's decision to admit the police officer's expert testimony despite the officer acknowledging he had no requisite qualifications in motorcycle accident reconstruction, violate Texas Rule of Evidence 702?
2. In relying on *Nenno*, instead of *Kelly*, did the appellate court apply an incorrect standard when determining that an accident reconstruction expert's testimony was reliable even though he applied no scientific theory or testing from that field and he had no qualifications in the field of motorcycle accident reconstruction?
3. Should the less rigid *Nenno* standard apply, as opposed to the *Kelly* standard, when an expert in a technical scientific field chose to not apply any of the scientific testing or theory to a particular case?

17-0498 ROGERS, WILLIAM
APPELLANT'S REFUGIO

08/23/17
BURGLARY

Did the 13th Court of Appeals err in the analysis of "harm" in this case and in finding any error harmless?

17-0503 DELACRUZ, GEORGE
APPELLANT'S TRAVIS

07/26/17
MURDER

1. In a murder case, where there is no body, no direct evidence of a death and no direct evidence to show that Petitioner acted either intentionally or knowingly in causing the alleged victim's death or acted with intent to cause serious bodily injury and committed an act clearly dangerous to human life that caused the alleged victim's death, must the State prove a "fatal act of violence" in order to convict a person of murder?
2. The Court of Appeals erred in finding the evidence sufficient to support the Petitioner's conviction for murder when the State failed to prove beyond a reasonable doubt that the alleged victim was deceased and that her death was caused by a criminal act of Petitioner.
3. Did the Court of Appeals err in finding the evidence sufficient to support Petitioner's conviction?
4. The Court of Appeals rendition of crucial evidence in its opinion was erroneous and the Court of Appeals relied on this erroneous rendition of the evidence in finding the evidence sufficient to support Petitioner's conviction.

17-0514 SMITH, FERNANDO
APPELLANT'S CORYELL

08/23/17
ASSAULT

When a defendant files a timely notice of appeal from a judgment adjudicating his guilt and is later placed on shock community supervision, to complain on appeal about a condition of that community supervision must he file a new notice of appeal?

17-0538 ETTE, EDDIE OFFIONG
APPELLANT'S TARRANT

09/13/17
MISAPPLICATION OF
FIDUCIARY PROPERTY

The court of appeals erred in affirming a fine included in the judgment which had not been orally pronounced by the trial court at sentencing.

17-0549

MARKS, WILLIAM

09/13/17

17-0550

17-0551

STATE'S

HARRIS

**VIOLATIONS OF PRIVATE
SECURITY ACT**

1. Whether the court of appeals failed to apply the tolling provisions of Texas Code of Criminal Procedure article 12.05(b), in conflict with this Court's decision in *Hernandez v. State*, 127 S.W.3d 768 (Tex. Crim. App. 2004).
2. The Fourteenth Court of Appeals' misinterpretation of Art. 12.05 led it to find that the error in amending the indictment affected the defendant's substantial rights under Tex. R. App. P. 44.2(b).

17-0563

LANG, TERRI REGINA

10/04/17

APPELLANT'S

BURNET

ORGANIZED RETAIL THEFT

1. May this Court adhere to a rule that refuses to allow the consideration of legislative history to interpret a statute unless the statute is ambiguous, when the Legislature states that legislative history may be considered whether or not a statute is ambiguous?
 - a. Must *Boykin v. State*, 818 S.W.2d 782 (Tex. Crim. App. 1991) and its progeny be overruled to the extent they conflict with Texas Government Code Section 311.023, which Texas Penal Code Section 1.05(b) makes applicable to the Penal Code?
2. Does the organized retail theft statute admit of more than one reasonable interpretation with respect to whether the statute may be violated by a solitary actor committing ordinary shoplifting, and does consulting the plain language alone lead to absurd results that the legislature could not possibly have intended?
3. May a shoplifter violate the organized retail theft statute by committing ordinary shoplifting while acting alone?

17-0638

BEHAM, RODERICK

10/04/17

STATE'S

BOWIE

AGGRAVATED ROBBERY

1. Is expert testimony that a defendant holds himself out as a gang member—without proof he is one—relevant to sentencing?
2. In assessing harm, did the court of appeals err in failing to isolate the opinion testimony from the photographs on which that opinion is based?

17-0672

BOYETT, CRYSTAL LUMMAS

10/18/17

APPELLANT'S

HARDIN

MANSLAUGHTER

The Court of Appeals erred in affirming the trial court's judgment because the evidence presented at trial was sufficient to satisfy the statutory standard of "some evidence" necessary to require a "formal competency hearing."

17-0710

GARRELS, ELIZABETH ANN

08/23/17

APPELLANT'S

MONTGOMERY

DRIVING WHILE INTOXICATED

Has a defendant who did not object to a trial court's declaration of mistrial, despite an adequate opportunity to do so, impliedly consented to the mistrial?

17-0711

FRASER, MARIAN

11/01/17

STATE'S

McLENNAN

MURDER

Can the felonies of reckless or criminally negligent injury to a child or reckless or criminally negligent child endangerment underlie a felony-murder conviction when the act underlying the felony and the act clearly dangerous to human life are one and the same?

17-0715

SMITH, JOSEPH

12/13/17

APPELLANT'S

HARRIS

AGGRAVATED ROBBERY

1. The court of appeals employed the wrong analysis when reviewing the record to determine whether a "voluntary intoxication" instruction was error to include in Appellant's punishment-phase jury charge.
2. The inclusion of an 8.04(a) instruction at punishment violates the Due Process Clause because it could mislead a rational jury into believing that it could not — as a matter of law — consider a defendant's drug-addiction evidence as mitigation; thus the court of appeals's holding that it is not a charge error conflicts with applicable holdings of the U.S. Supreme Court.
3. In it's harm analysis of the State's unconstitutional jury argument, the court of appeals did not address how that argument highlighted inadmissible evidence and how it impermissibly increased the likelihood that the jury punished Appellant for an extraneous crime.

17-0734 RUSSELL, BOYD RAE 09/13/17
APPELLANT'S MARION DRIVING WHILE INTOXICATED

Did the Court of Appeals err in finding that the prior conviction for operating a watercraft while intoxicated was a final conviction?

17-0736 LEE, JOHN KENNETH 11/15/17
STATE'S VICTORIA DRIVING WHILE INTOXICATED

1. The Court of Appeals decided an important question of state law in a way that conflicts with applicable decisions of the Court of Criminal Appeals when it found the State's opening argument to constitute error.
2. The Court of Appeals decided an important question of state law in a way that conflicts with applicable decisions of the Court of Criminal Appeals when it found the Appellant did not have to make a timely objection in order to preserve a claim of error related to the State's opening argument.
3. The Court of Appeals has so far departed from the accepted and usual course of judicial proceedings in finding that an instruction to disregard would not have cured any potential prejudice in this case as to call for an exercise of the Court of Criminal Appeals' power of supervision.

17-0748 LACKEY, KELSEY JO 11/01/17
APPELLANT'S BRAZOS THEFT

Did Appellant voluntarily, knowingly and intelligently waive his right of appeal by signing a boilerplate waiver?

17-0771 CHAMBERS, JOHN 01/10/18
APPELLANT'S CAMERON TAMPERING WITH
GOVERNMENTAL RECORD

1. The appellate court improperly reviewed the legal sufficiency of the evidence against Chambers pursuant to § 37.10 of the Texas Penal Code when it refused to acknowledge that the Texas Commission on Law Enforcement was acting in contravention of its legal authority.
2. This Court should summarily grant this petition for discretionary review and remand the case to the court of appeals because of that court's failure to comply with Texas Rule of Appellate Procedure 47.1.
3. The trial court abused its discretion by failing to submit an instruction to the jury on the applicable law regarding the distinction between an employee and a volunteer reservist.
4. The difference between the class A misdemeanor and the felony enhancement pursuant to § 37.10 of the Texas Penal Code is a distinction without a difference. In addition, the appellate court's reliance upon an improper application of law is legally insufficient to uphold a finding of an "intent to defraud."

17-0790 THOMAS, KEITHRICK 11/22/17
APPELLANT'S HARRIS POSSESSION OF A
CONTROLLED SUBSTANCE

Has a Fourth Amendment violation occurred, where a police officer approaches a vehicle passenger, after the passenger has exited the vehicle, and conducts a warrantless search of the passenger's pockets, in the driveway of the passenger's house?

17-0792 WATERS, AMANDA 10/25/17
STATE'S WICHITA DRIVING WHILE INTOXICATED

Whether this Court should explicitly overrule *Tarver* and the concept of state collateral estoppel since collateral estoppel should not bar the State from prosecuting a criminal offense following an adverse finding at a probation revocation hearing.

17-0797 ARROYO, DAVID 10/25/17
STATE'S BEXAR INDECENCY W/CHILD

1. In light of significant statutory changes, does *Nelson v. State* have continued validity when interpreting § 21.11 of the Texas Penal Code?
2. Under § 21.11 of the Texas Penal Code, what is a "breast"?

17-0804 GARCIA, SAMUEL OSVALDO 11/01/17
STATE'S CAMERON POSSESSION OF A

CONTROLLED SUBSTANCE

1. Is a claim that counsel misadvised a defendant about the deportation consequences associated with a guilty plea cognizable on habeas despite *Ex parte De Los Reyes*' holding that *Padilla* does not apply retroactively on habeas?

17-0812
STATE'S

GOLLIDAY, JOSHUA
TARRANT

02/07/18
SEXUAL ASSAULT

1. Did the majority opinion correctly hold that TEX.R.EVID. 103 trumps TEX.R.APP. P. 33.1 and relieves an appellant of the need to have informed the trial court of the legal basis for admitting the proffered evidence?
2. Does the majority opinion conflict with precedent from this Court when it holds that an appellate complaint about the exclusion of defense evidence need not comport with the appellant's trial objection?
3. Did the majority opinion contradict this Court's precedent by holding, in the alternative, that Appellant preserved his constitutional complaints about the exclusion of defense evidence with, among other things, a general remark, made during opening statement, and his argument that the victim's testimony from the first voir dire hearing was relevant so the jury could "get the whole picture"?
4. Did the majority opinion properly deal with Appellant's en masse first offer by plucking out items when the offer contained other material that was inadmissible?
5. Did the majority opinion correctly find constitutional violations in the exclusion of defense evidence?

17-0878
APPELLANT'S

MARTINEZ, JUAN, JR.
BEE

01/24/18
INTOXICATION
MANSLAUGHTER

The Court of Appeals erred in holding that the trial court properly granted the defendant/appellee's motion to suppress evidence that revealed the results of testing of the blood of the defendant/appellee.

17-0907
APPELLANT'S

BROUGHTON, CHRISTOPHER ERNEST, JR.
HARRIS

12/06/17
MURDER

1. What is the standard of review for evaluating a claim of legally insufficient evidence on the State's non-evidentiary burden of persuasion in a claim of self-defense/defense of others?
2. Whether the intermediate-appellate court erred when it determined that the State met its non-evidentiary burden of persuasion and that Appellant was unjustified in acting in self-defense/defense of others?
3. Whether the trial court's erroneous decision not to issue a requested-lesser-included offense was harmless as the intermediate-appellate court concluded in its re-issued opinion??

17-0941
APPELLANT'S

SIMS, CHRISTIAN VERNON
LAMAR

02/14/18
MURDER

1. The Court of Appeals erred by ruling that under Tex. Code Crim. Proc. Art. 38.23(a), violations of the Federal Stored Communication Act ("SCA") and Tex. Code Crim. Proc. Art. 18.21 do not require suppression of evidence pertaining to the warrantless pinging of a cellphone because: (1) the plain-language of Tex. Code Crim. Proc. Art. 38.23(a) states that no evidence obtained by an officer or other person in violation of any provisions of Texas or federal law shall be admitted in evidence against the accused; (2) Tex. Code Crim. Proc. Art. 38.23(a) is intended to provide greater protection than the Fourth Amendment; and (3) it is irrelevant that the SCA and Tex. Code Crim. Proc. Art. 18.21 do not provide that suppression is available since they are laws of Texas and the United States, and neither prohibits suppression of illegally obtained evidence under Art. 38.23(a).
2. The Court of Appeals erred by holding that Appellant was not entitled to a reasonable expectation of privacy in the real-time, tracking-data that was illegally seized because under the Fourth Amendment and Tex. Code Crim. Proc. Art. 38.23(a), a person has a legitimate expectation of privacy in real-time tracking-data regardless of whether he is in a private or public location.

17-0942-47
STATE'S

MARTINEZ, ANDREY
HIDALGO

12/13/17
BURGLARY OF A BUILDING

Are misstatements during a plea colloquy that a defendant's sentences could be stacked enough to render a defendant's plea involuntary without any record of what the defendant knew and why he pleaded guilty?

17-0948

HANSON, CRISPEN

11/01/17

STATE'S**EL PASO****INJURY TO A CHILD (2 CTS)**

1. Where, regardless of whether the shock-probation order was "original" or "amended," because it is a type of order identified as appealable under the plain language of article 44.01, and because the State's notice of appeal was filed within 20 days from the amended order's entry, the Eighth Court, in holding that the State's notice of appeal was untimely and dismissing the State's appeal for lack of jurisdiction, failed to give effect to the plain language of article 44.01 and thus erred.
2. Where, by entering an amended order, the trial court indicated its intent to supercede its original shock-probation order, and where the trial court's amended order contained additional fact findings that were a statutory prerequisite to the proper granting of shock probation, the Eighth Court erred in holding that it was the original (not the amended) order that constituted an "appealable" order. The State's notice of appeal from the amended order was therefore timely.

17-0967**STATE'S****TRAYLOR, PETER ANTHONY****COLLIN****12/13/17****BURGLARY OF A HABITATION**

1. Has the court of appeals misapplied *Blueford v. Arkansas* by holding that two jury notes indicating the jury deadlocked on a lesser-included offense amount to an informal verdict of acquittal on the charged offense?
2. Do mere jury notes regarding a deadlock on a lesser-charge contain sufficient indicia to show the jury manifestly intended an informal verdict of acquittal?
3. Did *Blueford v. Arkansas* overrule this Court's precedent that a jury's report of its progress towards a verdict does not amount to an informal verdict of acquittal?

17-0972**STATE'S****RAMJATTANSINGH, JASON****HARRIS****11/15/17****DRIVING WHILE INTOXICATED**

1. Does the filing of a charging instrument containing non-statutory language prohibit the appellate court from considering the hypothetically correct jury charge in a sufficiency review?
2. Did the First Court of Appeals sit as a thirteenth juror when holding that a two-hour interval between the time of the stop and the breath test was not sufficient to prove the appellant's breath alcohol concentration was a 0.15 near the time of the offense?

17-1024**17-1025****APPELLANT'S****FINEBERG, LISA ANN****DALLAS****02/07/18****INJURY TO A CHILD**

Did the Fifth Court of Appeals err by holding and determining that the State had a compelling interest in protecting children, including Fineberg's biological children, from sexual exploitation without also determining whether the community supervision modification prohibiting Fineberg's contact with her children was narrowly tailored to serve the compelling state interest?

17-1066**STATE'S****ROSS, DAI'VONTE E'SHAUN TITUS****BEXAR****01/24/18****DISORDERLY CONDUCT**

1. Does an information that tracks the language of section 42.01(a)(8) provide a defendant sufficient notice that he displayed a firearm in a manner calculated to alarm?
2. Did the court of appeals err by applying a First Amendment and Fourteenth Amendment rule to a Sixth Amendment complaint?
3. Is the term "alarm" within the context of section 42.01(a)(8) inherently vague?

17-1100**STATE'S****WOOD, CYNTHIA KAYE****HARRIS****01/10/18****ATTEMPTED CAPITAL
MURDER**

The lower court erred in holding that an indictment for criminal attempt is fundamentally defective when it does not allege the constituent elements of the underlying offense attempted.